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Education

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1. Under the topic of Education, I shall focus on recent developments concerning Additional Learning Needs, Nursery Education and Faith Schools.

Additional Learning Needs

2. Additional learning needs ("ALN") is the term which will replace "special educational needs" ("SEN"). According to data from January 2014, 22% of pupils in Wales have SEN, but only 2.7% have a Statement of SEN.

3. The Draft ALN and Education Tribunal (Wales) Bill ("the Bill") was finally published on 9 July 2015. The consultation and feedback process will continue until 18 December 2015. The Bill was based on the white paper "Qualified for Life", which focused on the capacity of the future Welsh workforce, involving health, social care and communities. The main theme is said to be inclusion, so that in principle all pupils will be educated together, regardless of their ALN. "Qualified for Life" had been published in 2014, setting out the Minister's long-term vision for learners aged three to 19 in Wales, with strategic objectives up to 2020. Under those proposals, there was to be a unified legislative framework to support learners from birth to 25 years old who have ALN, an integrated collaborative process of assessment, planning and monitoring which would facilitate early, timely and effective interventions, and a fair and transparent system for providing information and advice, and for resolving concerns and appeals.

4. The white paper set out the key changes. First, the terms "special educational needs" and "special educational provision" were to be replaced by "additional learning needs" and "additional learning provision". This was intended to foster a sense of inclusivity and to remove stigma which had become associated with the term "special educational needs".

5. Clause 2(1) of the Bill defines ALN as something a person has "if he or she has a learning difficulty or disability which calls for additional learning provision". A learning difficulty or disability is then defined in clause 2(2) as something which someone has who "has a significantly greater difficulty in learning than the majority of others of the

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same age" or who "has a disability which prevents or hinders him or her from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools or mainstream institutions in the further education sector." Under clause 2(4), speaking English or Welsh (*ie* the language in which the pupil will be taught) as a second language is excluded from the definition.

6. The new definition of ALN will include all of the learners currently seen as having special educational needs, whether through a statement, School or Early Years Action, or School or Early Years Action Plus. The same language will be used up to the age of 25, instead of describing those young people as having learning difficulties and disabilities. It is not expected that the actual additional learning provision will change dramatically from what is being provided now under the label of special educational provision.

7. Earlier discussions of a very broad definition of ALN, to include very able children, child performers, children who work, child carers, *etc* have not found favour, and the proposed regime is very similar to the SEN regime. The age group covered will be extended from birth to 25 years of age. The current SEN extends to children up to the age of 16, or up to the age of 19 if they stay in school or attend a further education college. The framework of ALN will go right up to the age of 25, which the age by which formal education has finished for nearly everyone, except for those who undertake doctoral degrees or who enter higher education as mature students.

8. The proposed definition of additional learning provision under clause 3 is something additional to, or different from, the educational provision made generally for children or young persons of the same age in mainstream schools, the further education sector or nurseries in Wales.

9. According to the white paper, the new ALN Code of Practice ("the Code") should set out the full detail of the new legal framework and will be the document used the most by professionals who work with children and young people in ALN. The Code also has to be written in a way which is accessible to families, and should show them clearly and accurately what they can, and possibly what they cannot, expect from the professionals who are working with their children. The aspiration of the Minister is that the Code should be clear, contain mandatory requirements, and be easily enforceable. It is intended that services will need to work together collaboratively and flexibly in order to

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ensure that children, young people and their families and carers receive coherent, well co-ordinated support which helps them achieve positive outcomes.

10. In the Bill, clause 4 requires the Welsh Ministers to issue the Code, which may include guidance on the functions of local authorities in Wales and England, governing bodies of maintained schools and further education institutions, local health boards, National Health Service ("NHS") trusts, the NHS Commissioning Board, clinical commissioning groups, NHS foundation trusts, and those in charge of relevant youth accommodation. The Education Tribunal for Wales ("the Tribunal") will be required to have regard to any relevant provision of the Code, and the Code must be published on the Welsh Ministers' website.

11. Clause 5 contains requirements for consultation on the draft Code with local authorities, governing bodies, Her Majesty's Chief Inspector of Education and Training in Wales, and any other appropriate person.

12. Under clause 6, those exercising functions under the Bill are required to have regard to the views, wishes and feelings of the child and the child's parents, the importance of the child and parents participating as fully as possible in decisions, and to the importance of the child and parent being provided with the full information and support necessary to participate in those decisions. Clause 7 imposes a duty on local authorities to make arrangements to provide people with information and advice about ALN and the system in operation.

13. The white paper stated that instead of having a Statement of special education need, or a Learning Difficulty Assessment made under section 139A of the Learning and Skills Act 2000 for pupils in year 11, every eligible person will have an Individual Development Plan ("IDP"). The IDPs should identify the statutory protection which children and young people in Wales have in regard to their educational needs. It is expected that the new Code will set out a detailed structure and minimum standards for an IDP. The content of the IDP will probably be very similar to what one would see in a good Statement of SEN, such as the child or young person's identified needs, the agreed outcomes, the provision required to meet those ALN, an action plan setting out who will deliver the agreed interventions, where, when and how, what kind of monitoring or measurement of outcomes will be used, and success criteria and review dates. What is written in the

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ALN needs to be sufficiently clear and robust to constitute a document of rights which are legally enforceable.

14. Clause 8 of the Bill defines the IDP as a document which contains a description of the person's ALN, a description of the additional learning provision called for, and anything else required or authorised under the new Act. The duty on the governing body of a maintained school to decide whether the pupil has ALN, and, if so, to prepare an IDP, appears in clause 9 of the Bill. Clause 10 is to the same effect for further education institutions. Exceptions to those duties are found in clause 11: where the young person does not consent to the decision being made; where the governing body has previously made a decision and the needs have not changed materially since then and no new information exists that materially affects that decision; and where the governing body refers the decision to the local authority to decide. The governing body may only refer the decision to the local authority if the decision is beyond its capability or the ALN call for provision which it would not be reasonable for the governing body to secure. Clause 12 contains the local authorities' obligations in relation to making an IDP. Exceptions to the local authorities duty to decide on an IDP appear in clause 13, in similar terms to clause 11. Under clause 14, an IDP may specify that additional learning provision will be secured by a local health board or NHS trust, where the health bodies agree. Clause 14 cannot require a health body to provide anything which cannot be provided under the comprehensive health service in Wales. Nevertheless, the Tribunal's power to make an order is not affected by clause 14. Clause 15 deals with reviews of the IDP, and clause 16 provides for the inclusion of other similar documents prepared at the same time within the IDP, presumably expert reports or school reports.

15. A local authority has a duty under clause 17 to reconsider decisions of governing bodies about ALN where the child, young person or parent requests reconsideration, and to reconsider IDPs in the same circumstances under clause 18. Under clause 19, a local authority must decide whether to take over responsibility for maintaining an IDP when requested by the governing body, child or young person or a parent. Similarly, where a governing body or local authority ceases to maintain an IDP under clause 20, the child, young person or parent may request the local authority to reconsider that decision under clause 21, within a prescribed period of time.

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16. Clause 24 contains the power to maintain an IDP until the end of the academic year during which the young person attains the age of 25.

17. Under clause 25, a governing body has a duty to take all reasonable steps to help the authority to secure additional learning provision called for in the IDP, as does a further education institution. Clause 26 contains the duty for the governing body to admit a child where the IDP names the school. Charging for additional learning provision is prevented by clause 27.

18. The principle of inclusivity is found in clause 29. A child with ALN must be educated in a mainstream school unless that is incompatible with the wishes of the child's parents, or the provision of efficient education for other children. Under clause 30, additional learning provision in an IDP may be provided otherwise than in school, but only if the local authority is satisfied that it would be "inappropriate" for it to be made in a school.

19. There are around 44 independent schools in Wales. Under clause 31, the Welsh Ministers must publish in the register of independent schools in Wales the type or types of additional learning provision made there. Clause 32 provides that a local authority may not arrange ALN provision at an independent school unless it appears in the register and can make additional learning provision that corresponds to the needs in the IDP. Clause 33 requires a list to be maintained of independent post-16 institutions in England and Wales likewise.

20. In clause 37 is a duty on local authorities to make arrangements with a view both to avoiding and resolving disagreements between education bodies and children, young people and parents, and also between proprietors of relevant institutions and children, young people and parents. It also contains requirements concerning consultation, and for allowing parents to access help from independent sources. Clause 38 requires local authorities to provide independent advocacy services for children and young people, for both resolution of disagreements by the local authority and proceedings before the Tribunal. It empowers a local authority to pay for such independent advocacy services for parents too. Under clause 39, regulations may be made for a child or young person to have a "case friend", rather like a litigation friend, during disagreements about IDPs.

21. Clause 40 provides for appeals to the Tribunal concerning IDPs, similar to the current SEN system. Under clause 40(5) regulations may be made conferring a power on the

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Tribunal to make recommendations on other matters, including matters against which no appeal may be brought. Clause 40(6) makes it an offence, for which a fine may be imposed, to breach a requirement about disclosure or about giving evidence. Procedural rules for the Tribunal will be made by regulations made under clause 41. Under clause 44, appeals from the Tribunal may be brought to the Upper Tribunal on any point of law, but only with the permission of either the Tribunal or Upper Tribunal.

22. Clause 45 imposes a very general duty on local authorities to keep under review the arrangements made by itself and governing bodies for children and young people with ALN in their areas. Under clause 49, if a local authority requests information or other help, then compliance is required by the other public body unless it is incompatible with the other body's duties or would have an adverse effect on the exercise of the public body's functions. Clause 50 provides that a person authorised by a local authority is entitled to have access at any reasonable time where necessary for exercising functions in relation to ALN, to independent schools, maintained schools, further education institutions, Academies, non-maintained special schools and independent special post-16 institutions on the approved list.

23. Regulations may be made about the provision of goods and services by local authorities to persons making additional learning provision (under clause 51), about the disclosure and use of information (under clause 52), and about enabling another adult to do the things a parent would do in relation to ALN where the parent lacks mental capacity (under regulation 53). Clause 56 empowers the making of special regulations about looked after children and young people who were looked after. Clauses 57-62 deal with young people who have been detained.

24. The SEN Tribunal for Wales is renamed in clause 63 and clause 64 deals with the President and panel members.

Nursery Education

25. There have been two very significant recent High Court cases on the provision of nursery education in Wales, heard in May 2014 and then in April 2015. In *R (West) v Rhondda Cynon Taff County Borough Council* ([2014] EWHC 2134 (Admin)) the Claimants challenged the local authority's decision to cease funding full-time nursery education for three-year-olds from September 2014, which was the start of the

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coming academic year, in the context of austerity cuts. It had been the practice of the council to provide free nursery education from the age of three for many years, but in January 2014 the cabinet decided that that provision would be reduced to 15 hours a week from the term after the particular child's third birthday. In consequence of the cessation of the full-time nursery provision to that age group, free school meals and free school transport provision would also have ended for over 3,300 children. The cabinet's decision was called in by the Education and Lifelong Learning Scrutiny Committee, but it decided not to refer the decision back to the cabinet for reconsideration.

26. Supperstone J considered an application for permission and judicial review. The duty to provide sufficient nursery education was found in section 118 of the School Standards and Framework Act 1998 ("the 1998 Act"). The council's obligation was to secure that the provision, whether or not by them, of nursery education for children who had not attained compulsory school age but had attained such age as may be prescribed as sufficient for their area. Under the Education (Nursery Education and Early Years Development and Childcare Plan (Wales) Regulations 2003, the prescribed age was reduced to the term after the child's third birthday, from the fourth birthday. Under section 118(2) of the 1998 Act, in determining whether the provision of nursery education was sufficient, the council had to have regard to any guidance given from time to time by the National Assembly for Wales.

27. Welsh Office Circular 7/99 was that guidance, and it stated under the heading "Targets", "The provision of a free, at least half-time, good quality, education place during the three terms before the start of compulsory education for every four-year-old whose parents want this. It should be as accessible as possible to the child's home. Half time means a minimum of ten hours a week for around the same number of weeks as the normal school year. This has already been achieved in Wales from September 1998." The guidance referred to year 1999-2000 and so it was literally inapplicable, but the council argued that it should be taken as continuing from year to year, and the reference to four-year-olds should be taken as to three-year-olds because of the change in the prescribed age.

28. Section 22 of the Childcare Act 2006 ("the 2006 Act") imposed an obligation on the council to secure so far as was reasonably practicable that the provision of childcare,

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whether or not by them, was sufficient to meet the requirements of parents in their area who required childcare in order to enable them to take up or remain in work, or to undertake education or training which could reasonably be expected to assist them to obtain work, and that duty applied to anyone under the age of 14. When determining the sufficiency of childcare provision, the council was required to have regard to the needs of parents in their area for the provision of childcare which was eligible for the childcare element of working tax credit or universal credit, to the provision of childcare suitable for disabled children, and to the provision of childcare involving the use of the Welsh language. Again, the council was under a statutory duty to have regard to any guidance. The relevant guidance was 013/2008, paragraph 2.7, which said that to fulfil its duty the council had to assess the local childcare market to develop a realistic and robust picture of parents' current and future need for childcare, then compare this assessment of parents' demand for childcare with information about the current and planned availability of childcare places. Regulations made by the Welsh Assembly under section 26 of the 2006 Act required the council to prepare assessments of the sufficiency of local childcare provision and to review those assessments, and the relevant regulations at the time were the Childcare Act 2006 (Local Authority Assessment (Wales) Regulations 2013.

29. Section 17 of the Children Act 1989 ("the 1989 Act") imposed a duty to safeguard the welfare of children in the council's area who were in need. A child was defined as in need if he was unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority, if his health or development was likely to be significantly impaired without the provision of such services, or if he was disabled. Under section 18 of the 1989 Act, the council must provide such day care as was appropriate for children in need in their area who were aged five or under and were not yet attending school, and must provide for children in need who were at school to have such care or supervised activities as was appropriate outside school hours.

30. In addition, aims of eradicating child poverty were relevant. Under the Children and Families (Wales) Measure 2010, a Welsh local authority was required to prepare and publish a strategy for contributing to the eradication of child poverty, and to have regard to guidance published. The guidance on that issue published by the Welsh government stated, "We know the quality of early education and childcare makes a difference to

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children's life chances and we know that it is especially beneficial to children from the most disadvantaged backgrounds." In the Welsh government document, "Building a brighter future: early years and childcare plan" it said, "For early years education and childcare to meet the requirements of families in Wales it needs to be of a high standard, available at the times and places where it is needed, at a price the parents can afford and available for children of different ages, backgrounds, cultures, abilities and needs."

31. Finally, the public sector equality duty contained in section 149 of the Equality Act 2010 ("the 2010 Act") imposed a duty on the council to have due regard when exercising its function for the needs to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act, to advance equality of opportunity between persons who share a relevant protected characteristic and person who do not share it, and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Age, gender, race, religion and disability were considered by Supperstone J to be the most relevant characteristics in regard to nursery education.

32. The Claimants argued that the council had failed to fulfil its statutory duties under all these five enactments. They said that the report and other documents presented to the cabinet had not informed members that the council had a duty to provide "sufficient" nursery education and that they had misstated the council's statutory obligations under the 1998 Act. The relevant section of the report said:

> **Our statutory obligation is provide all children with ten hours of nursery education per week from the beginning of the term following their third birthday.**
>
> **Whilst this is an obligation, it is not compulsory for children to attend school until they become of Compulsory School Age. This is the term following a child's fifth birthday.**
>
> **According from the term after a child's third birthday to the term after their fifth birthday our obligation is to make available ten hours per week of nursery education but the take up is at the discretion of parents/carers.**
>
> **Clearly our current admission arrangements, consisting of full-time education pre-compulsory school age (as detailed at 5.1) are in excess of statutory minimum requirements.**

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33. The Defendant responded that the report accurately recognised what was the statutory minimum requirement, and not a fixed obligation, and that there could have been no error of law so long as the council had considered what was sufficient nursery education on the premise that that might or might not be more than ten hours a week.

34. Supperstone J held that members reading the report to cabinet would have understood that there was a statutory obligation to provide ten hours' nursery education a week, and if that was achieved, no further statutory duty arose. He considered that the council's duty under the 1998 Act had been ignored. What was sufficient nursery education for an area would depend amongst other matters, on what childcare provision was available and affordable for those with children to meet their needs outside the times when they were receiving nursery education. The Claimants succeeded in their argument that the omission from the report to cabinet of the duty under the 2006 Act and the statutory guidance was significant. Supperstone J also noted that the members did not have the council's childcare sufficiency assessments in front of them when making the decision. He considered that members should have had a correct appreciation of the relevant statutory duties and guidance before making the decision.

35. Supperstone J accepted that the duty under the 1989 Act was a target duty operating at a general level. Nevertheless, since the cabinet was not referred to its statutory duties under the 1989 Act, it had no statutory framework behind its consideration of children in need and did not comply with its duties.

36. The Claimants failed in regard to the ground based on the eradication of child poverty. Supperstone J considered that the report to cabinet had adequately noted concern from respondents about the impact on the most vulnerable members of the community, including residents in deprived areas and those in need of additional support.

37. As to the public sector equality duty, the report had explained that duty and included a full Equality Impact Assessment. The Claimants challenged the rigour of that assessment in regard to the disproportionate impact on women as primary childcarers, the impact on deprived and poverty-stricken families, the impact on children of a certain age, the impact on disabled children, and on the young children's acquisition of Welsh. Nevertheless, Supperstone J did not accept that the council had failed to pay due regard to the public sector equality duty.

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38. The council tried again. Consultation began in October 2014 and lasted until December 2014, on which date the council decided to publish additional information and extend the consultation period until the end of January 2015. It made a decision on 12 February 2015. It decided to cease to free full-time nursery education for children who had reached the age of three. From the school term after reaching the age of three, part-time nursery education of up to 15 hours a week would be available from September 2015.

39. That decision was challenged in *R (Morris) v Rhonnda Cynon Taff County Borough Council* ([2015] EWHC 1403 (Admin)). I will not deal here with the judicial review challenge based on a failure properly to consult because my colleague, Jonathan Swift QC, has already covered that topic in his paper at today's conference. In the light of Supperstone J's judgment the previous year, the Claimants focused their arguments on the duty under the 2006 Act, concerning the obligation to secure sufficient children to meet the needs of parents who wanted to work or undertake education or training.

40. Patterson J considered the Welsh Government's guidance on that duty carefully, including on affordability of nursery provision for parents. The Claimants argued that although childcare was not the same as nursery education, the provision of nursery education had an obvious impact on what childcare families would need. They said where a council proposed to reduce nursery provision, it must consider how the additional need for children was going to be met, and may have to take measures to meet that need. The interrelationship between childcare and nursery provision had been recognised in *R (Littlefair) v Darlington Borough Council* [2013] EWHC 2744 (Admin)). The Claimants argued that the council had failed to reach a conclusion as to whether, in cutting nursery education, it would be complying with its duties under the 2006 Act. The initial report from October 2014 had referred to those statutory duties but said that council officers would investigate further. It was in the February 2015 report that the conclusions on the council's duty to secure sufficient childcare for working parents were set out, including noting that 40-60% of schools were likely to continue offering nursery education to three-year-olds despite the council's cut, and that a relatively low proportion of respondents had said that childcare was at present a barrier to their ability to work. Affordability was also covered in the report.

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41. The Claimants challenged the report in specific detail, essentially saying that the council's consideration had been too superficial. The Defendants said that the council was doing more than other local authorities in its nursery provision, and that it was entitled in principle to reduce its discretionary educational provision, as long as it addressed the childcare implications.

42. Patterson J found that there had been manifest compliance with the duty to secure sufficient childcare, because the council had identified affordability as an issue, sufficiently investigated affordability in the childcare sufficiency assessment, identified steps to address affordability in the childcare development plan, recognised that the decision to cut nursery provision would impact on affordability, and the Early Years and Family Support Services department was going to take appropriate steps to address affordability. She considered the council's decision "entirely rational" that fifteen hours' free nursery education was sufficient. It was also significant in her mind that 40-60% of schools were likely to continue to provide full-time nursery education anyway. Patterson J made clear that the duty to secure sufficient childcare is simply a target duty.

Faith Schools

43. *R (Diocese of Menevia, Governors of Bishop Vaughan Catholic School and W) v City and County of Swansea Council* [2015] EWHC 1436 (Admin) is another significant Welsh education case arising from austerity cuts. Within the council's area were 12 Welsh-medium schools, and six faith schools, which taught a minority of the local children. The council had published a policy on free transport for school pupils under which all pupils of primary school age who lived more than two miles from their catchment area school received free transport, as did secondary pupils who lived more than three miles away. Pupils attending faith schools or Welsh-medium schools received free transport even if there was an English-medium school or non-faith school closer to home.

44. The council decided to cease free transport for pupils of faith schools if there was a non-faith school within two or three miles from their home. Notably, free transport was maintained under the new policy for pupils of Welsh-medium schools.

45. The Claimants argued that the new policy was indirectly discriminatory on grounds of race, contrary to section 19 of the 2010 Act. In other words, they said that although the

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policy applied on its face to all pupils, it had a disproportionate impact – a particular disadvantage - on black and minority ethnic ("BME") children, which could not be justified as a proportionate means of achieving a legitimate aim. Both race and religion are protected characteristics under section 4 of the 2010 Act. The Learner Travel (Wales) Measure 2008 ("the Measure") required the provision of suitable transport arrangements to facilitate attendance of the child each day at his place of education if certain circumstances and conditions were met, including the distance criteria relied on by the council.

46. As is common in arguments on indirect discrimination, the parties disagreed about the proper pool for comparison. Wyn Williams J held that the court must determine the pool not by any exercise of discretion but by logical analysis, which should start from the provision, criterion or practice ("the PCP") which is said to be discriminatory. Everyone agreed that the saving of costs alone cannot be a legitimate aim capable of justifying indirect discrimination: something else is required along with the saving of costs.

47. Wyn Williams J considered that the PCP was, "The Council will provide free transport to the nearest suitable school which provides education through the medium of either Welsh or English provided that the pupil meets the distance criteria or non suitability of a safe walking route whereas the Council does not provide the transport to a faith school unless it is the nearest suitable provision and the distance criteria are met or there is no safe available walking route." At the outset, the Claimants did not produce statistics, however, during the hearing they produced a statistical analysis. The Defendants said the correct pool was all pupils of primary and secondary age in the Swansea area. There were 27,697 White British children, 3,661 BME children and 135 unknown. Of the White British children, 1,642 had free school transport under the current policy compared to 270 BME children. 527 of the White British children getting free transport attended faith schools, compared to 253 BME children. 1,115 children getting free transport attended Welsh-medium schools, of which only 16 were BME. 90% of the children getting free transport who were at faith schools were said to do so because of the current transport policy, so the amended policy would lead to a 90% reduction in the number of pupils travelling free to and from faith schools. Under the amended policy, 52 White British children would travel to faith schools free and 25 BME children would travel to faith schools free.

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48. The Defendant relied on a pool of all the children of primary and secondary school age in Swansea. It argued that under the new policy 1,168 children would get free transport, which was 4.2% of White British children and 1.15% of BME children, and that a difference of 3.1% was not significant.

49. The Claimants said that it was significant because the ratios were 3.65:1, which meant that a BME child was 3.65 times more likely to be adversely affected. Nevertheless, the Claimants' main argument was that the Defendant's pool was wrong. Wyn Williams J accepted that the pool should be all those pupils who would qualify for discretionary free school transport but for the changed policy; they were the only pupils with a genuine interest in the amended policy. On that basis, 29.17% of White British children were disadvantaged by the change compared to 86.23% of BME children. The Judge therefore considered whether the impact could be justified.

50. Wyn Williams J held that the twin objectives of saving costs and promoting education in Welsh were sufficiently important to justify limiting a fundamental right. It seems that the Claimants did not actively pursue the argument that promoting education in Welsh was not a legitimate aim capable of justifying indirect discrimination. The court held that the council had not in truth undertaken any investigate steps about how it could mitigate the disadvantage which the new policy would create for BME children. He concluded that the PCP was rationally connected to the objective, but he did not consider that the PCP was a proportionate means of achieving a legitimate aim. This is very important case with implications for decisions made by local authorities across a wide areas of functions.

51. The second ground concerning Article 14 of the European Convention on Human Rights failed. The third ground alleged that the report to the council's cabinet had misstated the law, and it succeeded. Wyn Williams J held that in light of his finding that the policy was indirectly discriminatory, the council had stated the law erroneously when purporting to have due regard to the public sector equality duty, because the equality impact assessment had said that the amended policy was neutral as to race; but he did not reach a firm conclusion as to whether that necessarily meant that it had failed to fulfil its obligation under section 149 of the 2010 Act. Ground five concerned another report, and is specific to the facts of the case.

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Conclusion

52. The Bill and the cases which I have discussed today illustrate the complexity of the challenge which faces local authority education departments in the climate of austerity. The budgeting process itself is complicated enough, but the intermeshed statutory duties and complex concepts must not only be understood by the officers, but set out for members in the manner prescribed by the courts, and very difficult questions of statistical analysis will increasingly arise.

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